

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Belmont University)	
	Map 105-09-0, Parcel 093.00)	Davidson County
	<i>Claim of Exemption</i>)	

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal from a denial of an application for exemption of the subject property from ad valorem taxation. This application was filed with the State Board of Equalization (the "State Board") on March 1, 2006. By letter dated May 19, 2006, State Board staff attorney, Mark Aaron, notified the applicant that the application was denied for the following reasons:

This is to inform you that your application for property tax exemption was denied due to non-qualification. Tennessee Code Annotated § 67-5-213 (a) grants exemption to real estate owned by a nonprofit educational institution and "used primarily for dormitory purposes for its students". There is no doubt that your organization qualifies as a nonprofit education institution. However, the Belmont Service Year Program participants who are housed rent-free at this property appear to be primarily alumni, not current students.

Belmont University, "Belmont" the applicant, timely appealed the staff attorney's initial determination to the State Board on August 18, 2006, pursuant to Tenn. Code Ann. § 67-5-212(b)(2). The undersigned administrative judge conducted a hearing of this matter on April 23, 2007 in Nashville, Tennessee.

Jason Rogers, University Legal Counsel, Dr. Todd Lake, Vice President for Spiritual Development Chairman, and Don Turner, a member of the Board of Trustee were present for the Taxpayer/Appellant. Attorney Margaret Darby, from the Metropolitan Legal Department appeared on behalf of the Davidson County Assessor of Property and John Cantrell, from the Property Assessor was present. Mark Aaron, Staff Attorney for the State Board of Equalization was also present.

Findings of Fact and Conclusions of Law

This home was purchased by Belmont University to be used and occupied by participants in the Belmont University Service Year Program under the authority of the University's Office of Spiritual Development. Representatives for the Taxpayer announced at the beginning of the hearing that the Program had changed focused. Dr. Lake indicated that the plan to use alumni did not work out and therefore the persons who would be occupying the home located at 2002 15th Avenue South would either be, preferably, Graduate students or under graduate students who would ". . . live as an example of Christ's service to others, leading others to a deeper faith in God" and "to address the needs of social service agencies, by providing essential staff support".

Article II, section 28 of the Tennessee Constitution permits the legislature to **exempt** from taxation property which is “held and used for purposes purely religious, charitable, scientific, literary, or educational.” Under this authority, the General Assembly has decreed that:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, **charitable**, scientific, or nonprofit **educational** institution which is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists... ; provided..., that no property shall be totally exempted, nor shall any portion thereof be pro rata exempted, unless such property or portion thereof is **actually** used purely and exclusively for religious, **charitable**, scientific or **educational** purposes. [Emphasis added.]Tenn. Code Annotated § 67-5-212(a) (1) (A).

In this state, property tax exemptions are liberally construed in favor of religious, charitable, and educational institutions. See, e.g., Christian Home for the Aged, Inc. v. Assessment Appeals Commission, 790 S.W.2d 288, 291 (Tenn. Ct. App. 1990). Nonetheless, as the party seeking to change the initial determination on its application for exemption, the “Belmont” has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

In an analysis of the application, the Designee’s ruling, the accompanying explanation in the appeal application and the testimony of the parties at the hearing it appears to the administrative judge that the appellant, “Belmont”, has not met the burden to change the initial determination.

The issues cited by the Designee have in the opinion of the administrative judge not been adequately addressed and therefore the initial determination is affirmed. The anticipated or future use cannot be a basis for the granting of an exemption. When the property was purchased in 2004, it sat vacant for almost two years, so the property was not actually in use or occupied by students of the University and therefore cannot be exempt. The community outreach program included making the common living space (living room) available for community meetings, this started on or about January 1, 2006. But the living area was reserved for the ‘alumni’ who were living in the home, which under the statute does not meet the criteria, in the administrative judge’s opinion. ¹ Dr. Lake testified that he anticipated that the students’ occupation would begin in June or July of the upcoming semester; it is then that the exemption would be effective.

This new information is certainly germane to issues under appeal. As Administrative Judge Pete Loesch noted in New Fellowship Ministries, (Hawkins County, Initial Decision and Order, October 13, 2006):

NFM undoubtedly qualifies as a religious institution under T. C. A. § 67-5-212. *Yet, based on the factual situation at the time, the staff attorney's ruling on the application was clearly correct.* Arguably, an applicant for exemption should not be allowed to submit new or additional information in an appeal from an initial determination. For better or worse, however, the Assessment Appeals Commission appointed by the State Board pursuant to T. C. A. § 67-5-1502 has followed the more lenient policy that ‘until an application is finally determined, the Board. . .should consider all pertinent evidence relative

¹The case law involves making living space available for “students”. George Peabody College v. State Board of Equalization, 407 S.W.2d 443, Tenn. 1966

to the application at hand.” (Emphasis supplied) Beth Sholom East Memphis Synagogue, Inc. (Shelby County, Final Decision and Order, May 16, 2001). p3

See also Christian Chapel Church, (Bedford County) *Initial Decision and Order*, August 8, 2003, when Administrative Judge Pete Loesch also stated:

. . . [A]n “appeal” of an initial determination is not confined to the question of whether the State Board designee acted properly on the basis of the information available. Rather, the appellant is permitted to submit new evidence in support of the claim of exemption . . . Indeed, the appellant may even “update” the application to include recent developments

The Supreme Court in Mid-State Baptist Hospital, Inc. v. City of Nashville, 211 Tenn. 599, 366 S.W.2d 769 (1963), has emphatically restated the proposition that in this State, contrary to most other states, tax exemption in favor of religious, scientific, literary and educational institutions are liberally construed, rather than strictly. It is further pointed out that the opinion in City of Nashville v. State Board of Equalization, 210 Tenn. 587, 360 S.W.2d 458 (1962) in nowise dilutes the rule of liberal interpretation.

However, it is the actual use² of property that is germane to the determination of exemptions, so until Belmont actually starts using the property the property remains taxable.

Order

It is, therefore, ORDERED that the initial determination of the State Board’s Designee is affirmed; when the exemptible use is started the parties are free to reapply.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

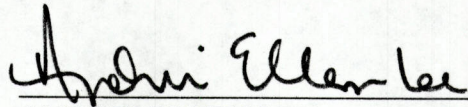
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing

²T.C.A. § 67-5-212 [a] nonprofit educational institution that is **occupied and used** by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists (emphasis added)

of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 10th day of July, 2007.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Jason Rogers, Legal Counsel for Belmont University
Dr. Todd Lake, Vice President, Spiritual Development, Belmont University
Metropolitan Attorney Margaret O. Darby
John Cantrell, Exemption Administrator, Davidson County Assessor's Office

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